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MATTHEW BRADLEY,)	ANALYTICAL GRAMMAR, INC.’S
)	MEMORANDUM OF LAW IN
Plaintiff,)	SUPPORT OF ITS MOTION FOR
v.)	LEAVE TO FILE A SURREPLY IN
)	RESPONSE TO MATTHEW
ANALYTICAL GRAMMAR, INC.,)	BRADLEY’S REPLY
)	
Defendant.)	
)	

“A party must seek leave of the court to file a surreply.” *Johnson v. Allen*, 416 F. Supp. 3d 550, 564 (E.D.N.C. 2018). “The standard for granting a leave to file a surreply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party’s reply.” *Lewis v. Rumsfeld*, 154 F. Supp. 2d 56, 61 (D.D.C. 2001). “[C]ourts generally allow a party to file a sur-reply ‘only when fairness dictates based on new arguments raised in the previous reply.’” *McClary v. Lightsey*, No. 5:14-ct-3147-FL, 2016 U.S. Dist. LEXIS 152530, *11 (E.D.N.C. Nov. 3, 2016) (quoting *DiPaolo v. Potter*, 733 F. Supp. 2d

666, 670 (M.D.N.C. 2010)). Analytical satisfies this standard because Bradley's reply papers presented his request to strike for the first time, and Analytical has had no chance to respond.

Bradley's request was procedurally improper. "A request for a court order must be made by motion." Fed. R. Civ. P. 7(b)(1). Bradley's request is an improper "discovery motion" under Local Civil Rule 7.1(c)(1) because it expressly seeks relief under Federal Rule of Civil Procedure 37, without meeting the basic requirements of Local Civil Rule 7.1. *See United States v. \$307,900,000 in U.S. Currency*, 156 F. Supp. 3d 708, 722 (E.D.N.C. 2016) ("to the extent claimants' motion seeks a discovery sanction it is a 'discovery motion' ... Motions, such as claimants' 'request' ... are to be separately filed and accompanied by a memorandum in support, not embedded within responses") (citing Local Civil R. 7.1(d)). Had Bradley complied with the governing rules and presented his request to strike by a distinct motion, not just within a reply brief, Analytical would have filed a response brief rather than a surreply, and its instant motion would have been unnecessary. His request to strike is also substantively baseless, as detailed in Analytical's proposed surreply. For good cause shown, Analytical should be granted leave to file its proposed surreply so that it can contest Bradley's new request to strike.

Therefore, and for the reasons further provided in the proposed surreply submitted herewith, the Court should grant Analytical leave to file its proposed surreply or deem it filed as proposed, consider it along with the summary judgment papers, and deny Bradley's request to strike.

Respectfully submitted,

Analytical Grammar, Inc.

By its attorneys:

Signed: August 27, 2020

/s/ Dan Booth

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Local Civil Rule 83.1(e) Special Appearance

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send notification of such filing to the following:

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This the 27th day of August, 2020.

/s/ Dan Booth
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